IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-01-2005

CORAM

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.Nos.16572 & 16573 OF 2004 AND
W.P.M.P.NOs.33835, 33836, 19588 & 19589 OF 2004
AND W.V.M.P.NOs.1585 & 1588 OF 2004

Cancer Institute (WIA),
Regional Cancer Centre,
through its Director,
Adyar, Chennai-600 020. .. Petitioner in both Writ Petitions

Versus

1. Government of Tamil Nadu,
   rep. by Secretary to Government,
   Health and Family Welfare Department,
   Secretariat, Chennai-600 009.

2. The Tamil Nadu Dr.MGR Medical University,
   rep. by its Registrar,
   No.69, Anna Salai, Guindy,
   Chennai-600 032.

3. Director of Medical Education,
   162, Periyar E.V.R.Salai,
   Kilpauk, Chennai-600 010.

4. Union of India,
   rep. by Ministry of Health and Family Welfare,
   Nirman Bhavan,
   New Delhi-110 611.

*5. Dr.G.Govindarajan

*6. Dr.Ramkumar Arvind

*R5 is impleaded as per
orders dated 23-9-2004 in
WPMP No.30816 of 2004

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*R6 is impleaded as per
orders dated 21-12-2004 in
WPMP No.33835 of 2004 .. Respondents in both
Writ Petitions

These Writ Petitions are filed under Article 226 of The Constitution of India to issue a Writ of Certiorari and Writ of Declaration respectively for the relief as stated therein.

For petitioner : Mr.Sriram Panchu, SC
for Mr.N.L.Rajah
For respondents : Mr.A.L.Somayaji, AAG for
V.Karthikeyan, AGP-R1&R3
Mr.Vellaisamy -R2
Mr.M.T.Arunan, ACGSC-R4
Mr.K.Subramanian SC for
Mr.Azhagar Shivanandam-R5
Mrs.Tilakavathi -R6

COMMON ORDER

The Petitioner is common in both the Writ Petitions.

2. In W.P.No.16572 of 2004, the petitioner seeks to challenge the order of the third respondent dated 3-2-2004 in Ref.No.1215/SCS II (1)/2003, in and by which, the petitioner has been directed to fill up only 50% of the seats in the courses offered by it leaving the other 50% of seats to be filled up by the State Government through the Single Window System-Common Entrance Examination conducted by it.

3. In W.P.No.16573 of 2004, the petitioner seeks for a declaration that the provisions of G.O.Ms.No.130 dated 17-6-2003 will have no application to admission to Super Speciality courses offered by the petitioner and that such admissions can be made purely on the basis of merits as directed by the Hon'ble Supreme Court in "Dr.Preeti Srivastava and another Vs. State of Madhya Pradesh and others" reported in "(1999)7 SCC 120" (herein after referred to as "Dr.Preeti Srivastava case").

4. The fifth respondent was impleaded as per the orders dated 23-9-2004 in W.P.M.P.No.31817 of 2004. The sixth respondent was impleaded subsequently as per the orders dated 21-12-2004 in W.P.M.P.No.33836 of 2004.

5. The petitioner institute is stated to be a Society registered under the Societies Registration Act of 1860. The said institution is stated to be a Research Centre in Oncological Sciences and a Centre of Preventive Oncology. It offers Post Graduate ourses in M.D.(Radiation Therapy) and D.M.R.T. apart from Super Speciality

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Courses of D.M.(Medical Oncology) and M.Ch.(Surgical Oncology). It is an unaided institution. It is also stated that the said institution does not charge any fees while on the other hand, it pays a stipend of Rs.9000/- per month to its students who are selected to undergo the super-speciality courses. It is also stated that the stipend is not payable to the students from the Army who receive their full salary. The petitioner claims to be the second best National Oncological Centre of India and first in Doctors competence in a survey conducted by a News Magazine.

6. In these Writ Petitions, we are only concerned with the Super Speciality courses, namely, D.M. (Medical Oncology) and M.Ch. (Surgical Oncology). The petitioner is having three seats in each of the above said courses. The State Government issued G.O.Ms.No.469 dated 18-9-1996 directing the petitioner institution to offer 50% of the seats in PG courses in the same manner in which they are being filled up in Tamil Nadu Government Colleges. Pursuant to the said G.O.Ms.No.469, dated 18-9-1996, the list of Institutions to which, the said Government Order was applicable was set out in G.O.Ms.No.119 dated 26-3-1997 and the petitioner institution was one of the institutions mentioned in the subsequent G.O.Ms.No.119 dated 26-3-1997. According to the petitioner, based on its representation, the State Government passed orders to the effect that G.O.Ms.No.469 dated 18-9-1996 would not apply to the petitioner by deleting the name of the petitioner institution from the list of the institutions mentioned in G.O.Ms.No.119 dated 26-3-1997.

7. After the Constitution Bench Judgment of the Hon'ble Supreme Court reported in "T.M.A.Pai Foundations and Others Vs. State of Karnataka and others" reported in "2002(8) SCC 481" (hereinafter referred to as "T.M.A.Pai Foundation case"), the State Government issued G.O.Ms.No.130 dated 17-6-2003 wherein, in para 4(i), (ii) and 5, it is stated as under:-

> "4. The Government have examined the matter and decided to accept the Government of India's guidelines regarding the seat sharing between Government and the Management in Unaided Private Medical/Dental Colleges imparting Postgraduate courses. The Government accordingly issue the following orders.
>
> (i) the seats in various Postgraduate courses (P.G.Degree/Diploma/MDS) in each unaided Self Financing Institution shall be filled up in the ratio of 50:50 by the State Government and the management of the Institution.

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(ii) the procedure of selection of students for these seats shall be as being followed for admission of students for these courses in Government Medical Colleges.

(iii) .....

(iv) .....

5. The Director of Medical Education/Secretary, Selection Committee is directed to take action accordingly."

8. When a copy of the above said Government Order was forwarded to the petitioner, the petitioner is stated to have sent a letter dated 17-9-2003 to the first respondent seeking exemption from the said notification in so far as the Super Speciality courses, namely, D.M. (Medical Oncology) and M.Ch. (Surgical Oncology). While no reply was sent by the first respondent, a letter dated 14-1-2004 was issued by the third respondent to all the Institutions including the petitioner Institution fixing the cut of date for all Under Graduate Courses and Post Graduate Courses for admission of students in the light of the Judgment of the Hon'ble Supreme Court reported in "T.M.A.Pai Foundation case". As per the said Notification, as far as the Super Speciality Courses are concerned, after the declaration of results by 30th June of the respective years, the first round of counselling/admission was to be concluded by 25th July and the last date for joining the course was fixed as 31st July. Further, in respect of the admissions against the vacancies arising due to any other reason, the last date was fixed as 30th September, 2004. It was, in those circumstances, the impugned order dated 3-2-2004 came to be issued by the third respondent prescribing 50% of the seats to be filled up by the allotment to be made by the State Government.

9. On behalf of the first and third respondents, counter affidavit has been filed by the first respondent countering the various averments contained in the affidavit filed in support of the Writ Petitions. According to the first and third respondent, in the light of the Judgment of the Hon'ble Supreme Court in 'T.M.A.Pai Foundation Case', for all professional courses including even the Super Speciality courses, the admission procedure as directed to be prescribed by the Hon'ble Supreme Court in the Judgments in 'T.M.A.Pai Foundation Case' as well as in the subsequent Judgment reported in "2003(6) SCC 697 (ISLAMIC ACADEMY OF EDUCATION AND ANOTHER versus STATE OF KARNATAKA AND OTHERS)" would apply and therefore, the petitioner is entitled to fill up only 50% of the seats while the other 50% should go to the first respondent State.

10. The fifth respondent who is in the medical service of the first respondent State is stated to have applied for M.Ch. (Oncology) pursuant to the Prospectus 2004-2005 issued by the third respondent and that in the event of the stand of the first

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respondent State being countenanced he is likely to be benefitted by securing the seat in M.Ch. (Surgical Oncology) course.

11. The sixth respondent is the candidate who has secured admission in the petitioner institution in M.Ch. Course for which seat, the present conflict has been raised in these Writ Petitions. The sixth respondent is stated to have been called upon to join the course by the petitioner through its communication dated 27-8-2004 and that he joined the course by 1-9-2004.

12. These Writ Petitions were entertained by this Court on 18-6-2004. While admitting the Writ Petitions, an order of interim injunction was also granted in W.P.M.P.No.19588 of 2004 restraining the respondent State from filling up any seats in the Super Speciality courses in the petitioner institution from the Government quota pending Writ Petition No.16572 of 2004.

13. By a subsequent order dated 18-8-2004, the interim injunction was directed to be continued until further orders.

14. In W.P.M.P.No.19589 of 2004 in W.P.No.16573 of 2004, an interim direction was granted on 18-6-2004 to the effect that the petitioner can fill up all the vacancies in the Super Speciality courses purely on the basis of merit as has been done in the previous years. In the said application, orders were passed on 18-8-2004 stating that in the light of the interim direction granted on 18-6-2004, no further orders are necessary. One other relevant factor to be noted is that by order dated 28-9-2004 in these Writ Petitions, it was stated as under:-

> "It is brought to the notice of the Court that the last date for admission as per the Notification of the third respondent is 30-9-2004. The third respondent will be bound by the final order to be passed in the Writ Petition. Hence, an order has got to be passed that in so far as the fifth respondent is concerned, the last date for admission i.e. 30-09-2004 will have no force. Accordingly, the same is ordered only in so far as the fifth respondent is concerned. Post the Writ Petition on 7-10-2004 at 2.15 p.m."

15. Mr.Sriram Panchu, learned senior counsel appearing for the petitioner contended that hitherto the petitioner was allowed to fill up all the seats in the Super Speciality courses on its own purely on merit, that the restriction imposed in G.O.Ms.No.130 dated 17-6-2004 will be applicable only to the other P.G.Courses, namely, D.M.R.T. And M.D.R.T. and will not apply to Super

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Speciality courses, that the impugned proceedings dated 3-2-2004 cannot, therefore, alter the settled position and that in the light of the Judgment of the Hon'ble Supreme Court reported in "Dr.Preeti Srivastava case", no such restrictions can be imposed in respect of Super Speciality courses. According to the learned senior counsel, when the petitioner was admitting the candidates to the Super Speciality courses by conducting a rigorous test on an all India basis, the candidates sponsored by the third respondent in particular the in-service candidates cannot be equated to the meritorious candidates selected by the petitioner for being admitted to the Super Speciality courses. The learned senior counsel would contend that even the decisions in 'T.M.A.Pai Foundation case' as well as one reported in "(2003)6 SCC 697 (ISLAMIC ACADEMY OF EDUCATION AND ANOTHER versus STATE OF KARNATAKA AND OTHERS)" (hereinafter referred to as "Islamic Academy of Education case") rendered by the Hon'ble Supreme Court have not diluted the ratio rendered by it in its earlier Constitution Bench Judgment in "Dr.Preeti Srivastava case".

16. Mr.K.Subramanian, learned senior counsel appearing for the fifth respondent, contended that the only distinction that one can discern from the Judgment of the Hon'ble Supreme Court is only with reference to professional institutions and non professional institution and therefore, whatever stated by the Hon'ble Supreme Court as regards the procedure to be followed for admission to various Under Graduate courses and Post Graduate courses would equally apply to the Super Speciality courses as well. The learned senior counsel pointed out that the Super Speciality course is nothing but a Higher Post Graduate course and therefore, the same cannot be excluded from the purview of the judicial dictum as regards admission. The learned senior counsel submitted that when once the State Government stipulated in G.O.Ms.No.130 dated 17-6-2004 that 50% of the seats in Post Graduate courses in all the other private institutions should be filled up through the process of selection made by it and when the fifth respondent had undergone the said process of selection pursuant to the Prospectus 2004-2005 issued by the third respondent, in the event of the fifth respondent being eligible for being allotted by virtue of his seniority in the merit list, the same cannot be deprived of by the petitioner. The learned senior counsel also submitted that in the light of the order dated 28-9-2004 referred to earlier, the fifth respondent would be entitled to be admitted irrespective of the expiry of the last date of admission, namely, 30-9-2004.

17. In this context, learned senior counsel relied upon the P.G.Medical Education Regulations 2000 issued by the Medical Council of India to point out that even super speciality courses are nonetheless P.G.Courses and whatever procedure applicable to P.G.Courses Admissions would be equally applicable to D.M.(Medical Oncology) and M.Ch.(Surgical Oncology).

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18. On behalf of the first and third respondents, Mr.A.L.Somayaji, learned Addl.Advocate General made his submissions. The learned Addl.Advocate General also submitted that the Judgments in "T.M.A.Pai Foundation case and Islamic Academy of Education cases" have held in no uncertain terms that the admission procedure should be as directed in the said judgments and that Super Speciality course is also a P.G.Course. He also placed before the Court the communication of the third respondent dated 26-7-2004 issued to the Press for the publication/telecast of the merit list for the 3 Years Higher Speciality Courses for 2004-2005, for which, the entrance examination was held on 27-6-2004 which was released in the web site on 27-7-2004. The learned Addl.Advocate General pointed out that in the said communication, the third respondent while referring to the total number of seats for the Higher Speciality courses also included the two seats available in the petitioner institution, namely, one in D.M.(Medical Oncology) and the other in M.Ch.(Surgical Oncology). He also pointed out that in the merit list for the seats that were available in the Government Medical Colleges, allotment has already been made and for the seats available in the petitioner institution having regard to the interim injunction granted on 18-6-2004, no allotment could be made and that in the event of this Court holding that those seats should be made available for allotment by the State, the same would be done as per the merit list already drawn.

19. Mr.Vellaisamy, learned standing counsel appearing for the second respondent University referred to the judgment of the Hon'ble Supreme Court reported in "(2002) 7 SCC 258 (MEDICAL COUNCIL OF INDIA versus MADHU SINGH AND OTHERS)" and submitted that all admissions are to be completed strictly as per the time schedule and that no deviation can be made.

20. Mrs.Tilakavati, learned counsel appearing for the sixth respondent contended that when merit is the relevant criteria for a Super Speciality course as held by the Hon'ble Supreme Court in 'Dr.Preeti Srivastava case; the criteria as prescribed in Sl.No.50 to 52 of the Prospectus 2004-2005 issued by the State Government if applied that would virtually dilute the ratio laid down in the said Judgment and therefore, the stand of the State Government cannot be countenanced. She placed reliance upon "1986 (3) SCC 727 (DR.DIDNESH KUMAR AND OTHERS versus MOTILAL NEHRU MEDICAL COLLEGE, ALLAHABAD AND OTHERS)", "1992(2) SCC 26 (DR.SNEHELATA PATNAIK AND OTHERS versus STATE OF ORISSA AND OTHERS)" and "2002(7) SCC 258 (MEDICAL COIUNCIL OF INDIA versus MADHU SINGH AND OTHERS)" in support of her submissions.

21. By way of reply, Mr.Sriram Panchu, learned Senior counsel appearing for the petitioner, referred to the judgments of the Hon'ble Supreme Court reported in "2002(1) SCC 428 (AIIMS

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STUDENTS' UNION versus AIIMS AND OTHERS)", in particular paragraph 59, to point out that there is always a distinction between Post Graduate Medical Course and Super-speciality. In para 59, the Hon'ble Supreme Court while holding that minimum standards cannot be diluted while showing any preference for institutional candidates, has stated "such marginal institutional preference is tolerable at Postgraduate level, but is rendered intolerable at still higher levels such as that of super-speciality". The learned senior counsel further reiterated his contention based on the observations by the Hon'ble Supreme Court in "Dr.Preeti Srivastava case" that a Superspeciality course is distinct and different from a Postgraduate course since the Hon'ble Supreme Court while concluding their decision in para 62, held that at the level of admission to the Superspeciality courses, no special provisions are permissible, they are being contrary to the national interest where merit alone can be the basis of selection. The learned senior counsel would contend that when in the Prospectus issued by the State Government for higher Super-speciality Courses, provision for awarding of marks for in-service candidates itself would dilute the merit based selection and therefore, it would be contradictory to the dictum of the Hon'ble Supreme Court. The learned Senior counsel also pointed that the Prospectus itself confined its scope of selection only to the seats which were specified in Annexure-II to the Prospectus and therefore, the present stand of the respondent-State that the selection made on that basis could be extended to fill up the seats in the petitioner institution cannot be permitted.

22. Having heard the learned counsel for the respective parties, I find that the question that arises for consideration in these Writ Petitions is, as to 'whether the admission procedure adopted by the petitioner Institution in respect of Super Speciality Courses offered by it is valid and can be said to be in consonance with the Judgments of the Hon'ble Suprme Court rendered in "T.M.A.Pai Foundation Case" and "Islamic Academy of Education Case" and Whether the State Government is entitled to sponsor the candidates whose merits was tested pursuant to the stipulations contained in its Prospectus of 2004-2005 in respect of 3 Year High Speciality Courses"

23. At the out set, it will have to be stated that the reputation of the petitioner institution as claimed by it in the field of administering treatment to the cancer patients and also imparting education in the field of Oncology can never be doubted. In fact, it is common knowledge that any person affected by cancer in this part of the State will immediately think of the kind of treatment that is being extended in the petitioner institution. It is thus a well known fact that the petitioner institution is a Premier Institution in the field of Oncology. According to the petitioner, it makes the selection for the Super Speciality

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courses as well as the other P.G.Courses on an all India basis by conducting a rigorous test of the candidates. It is also not in dispute that in the process of selection, no preference is shown to anybody. Therefore, there can be no two opinion that the selection made by the petitioner for the four different courses available in its institution is far superior and cannot be equated to the method of selection made by the third respondent as per the Prospectus issued by it. In this context, it will not be out of place to refer to the letter dated 5-10-2004 placed before this Court by the learned Addl.Advocate General said to have been submitted by one Dr.P.Arul Raj who is stated to have been selected by the State government for one of the Super Speciality course, i.e., M.Ch.(Surgical Oncology) in the Government Institution. The said candidate has expressed his desire that but for the pendency of this Writ Petition, he would have preferred the Cancer Institute seat in the foremost and that in the event of the said seat being made available, it should be offered to him. Such is the reputation of the petitioner institution in the field of cancer treatment and education.

24. Even in the previous years, it is not disputed that the petitioner institution was permitted to carry on its admissions for all the seats on its own in the Super Speciality courses. In fact, it was brought to the notice of this Court that by order dated 13-6-1997, the first respondent itself deleted the petitioner institution from the list of institutions mentioned in G.O.Ms.No.119 dated 26-3-1997 in which Government reserved its right to admit to the extent of 50% of the seats in P.G.Courses. Therefore, going by the name and fame of the petitioner institution, there is no doubt that the petitioner institution and its admission process to the various P.G.Courses and Super Speciality courses would run far ahead of any other test or process of selection that may be made by any State or any other body. However superior may be the claim of the petitioner in regard to the selection process conducted by it for such Super Speciality courses, the question that remains to be considered is as to 'whether such a special status enjoined and retained by the petitioner can be interfered with in the present prevailing situation'.

25. For considering the said question, a reference to the judgment of the Hon'ble Supreme Court in 'Dr.Preeti Srivastava case', 'T.M.A.Pai Foundation case' and Islamic Academy of Education case' are required to be stated.

26. In 'Dr.Preeti Srivastava case', the question that was posed for consideration was stated in para 2 as under:

> "The question is whether apart from providing reservation for admission to the Post-

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Graduate Courses in Engineering and Medicine for special category candidates, it is open to the State to prescribe different admission criteria, in the sense of prescribing different minimum qualifying marks, for special category candidates seeking admission under the reserved category."

27. Thereafter in para 10, it was stated as under:

"10. We have, therefore, to consider whether for admission to the Post Graduate Medical Courses, it is permissible to prescribe a lower minimum percentage of qualifying marks for the reserved category candidates as compared to the general category candidates. We do not propose to examine whether reservations are permissible at the Post Graduate level in medicine. That issue was not debated before us, and we express no opinion on it. We need to examine only whether any special provision in the form of lower qualifying marks in the PGMEE can be prescribed for the reserved category."

28. In para 22 of the above said Judgment, the Hon'ble Supreme Court observed as under:

"22. ..... At the level of higher post-graduate university education, however, apart from the individual self interest of the candidate, or the national interest in promoting equality, a more important national interest comes into play. The facilities for training or education at this level, by their very nature, are not available in abundance. It is essential in the national interest that these special facilities are made available to persons of high calibre possessing the highest degree of merit so that the nation can shape their exceptional talent that is capable of contributing to the progress of human knowledge, creation and utilisation of new medical, technical or other techniques, extending the frontiers of knowledge through research work-in fact everything that gives to a nation excellence and ability to compete internationally in professional, technical and research fields."

29. It will also be appropriate to refer to what has been stated in paras 23 and 24 of the above said Judgment, which

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reads as under:

> "23. This Court has repeatedly said that at the level of super-specialisation there cannot be any reservation because any dilution of merit at this level would adversely affect the national goal of having the best possible people at the highest levels of professional and educational training. At the level of a Super Speciality, something more than a mere professional competence as a doctor is required. A super-specialist acquires expert knowledge in his speciality and is expected to possess exceptional competence and skill in his chosen field, where he may even make an original contribution in the form of new innovative techniques or new knowledge to fight diseases. It is in public interest that we promote these skills. Such high degrees of skill and expert knowledge in highly specialised areas, however, cannot be acquired by anyone or everyone. For example, specialised sophisticated knowledge and skill and ability to make right choices of treatment in critical medical conditions and even ability to innovate and device new lines of treatment in critical situation, requires high levels of intelligent understanding of medical knowledge or skill and a high ability to learn from technical literature and from experience. These high abilities are also required for absorbing highly specialised knowledge which is being imparted at this level. It is for this reason that it would be detrimental to the national interest to have reservations at this stage. Opportunities for such training are few and it is in the national interest that these are made available to those who can profit from them the most viz., the best brains in the country, irrespective of the class to which they belong.
>
> "24. At the next below stage of post-graduate education in medical specialities, similar considerations also prevail though perhaps to a slightly lesser extent than in the super specialities. But the element of public interest in having the most meritorious students at this level of education is present even at the stage of post-graduate teaching. Those who have specialised medical knowledge in their chosen branch are able to treat better and more effectively, patients who are sent to them for expert diagnosis and treatment in their

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specialised field. For a student who enrols for such speciality courses, an ability to assimilate and acquire special knowledge is required. Not everyone has this ability. Of course intelligence and abilities do not know any frontiers of caste or class or race or sex. They can be found anywhere, but not in everyone. Therefore, selection of the right calibre of students is essential in public interest at the level of specialised post-graduate education. In view of this supervening public interest which has to be balanced against the social equity of providing some opportunities to the backward who are not able to qualify on the basis of marks obtained by them for post-graduate learning, it is for an expert body such as the Medical Council of India, to lay down the extent of reservation, if any, and the lowering of qualifying marks, if any, consistent with the broader public interest, in having the most competent people for specialised training, and the competing public interest in securing social justice and equality. The decision may perhaps, depend upon the expert body's assessment of the potential of the reserved category candidates at a certain level of minimum qualifying marks and whether those who secure admission on the basis of such marks to post-graduate courses, can be expected to be trained in two or three years to come up to the standards expected of those with post-graduate qualifications."

30. Ultimately in the concluding para 62 of the above said Judgment, the Hon'ble Supreme Court has held as under:-

"62. In the premises, we agree with the reasoning and conclusion in 'Dr.Sadhna Devi Vs. State of U.P. (AIR 1997 SC 1120)' and we overrule the reasoning and conclusions in 'Ajay Kumar Singh Vs. State of Bihar (1994 AIR SCW 2515)' and 'Post Graduate Institute of Medical Education & Research, Chandigarh Vs. K.L.Narasimhan (1997 AIR SCW 2274). To conclude:

1. We have not examined the question whether reservations are permissible at the post-graduate level of medical education.

2. A common entrance examination envisaged under the regulations framed by the Medical Council of India for post-graduate medical education

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requires fixing of minimum qualifying marks for passing the examination since it is not a mere screening test.

3. Whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the post-graduate level of medical education is a question which must be decided by the Medical Council of India since it affects the standards of post-graduate medical education. Even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at this level. The percentage of 20% for the reserved category and 45% for the general category is not permissible under Article 15(4), the same being unreasonable at the post-graduate level and contrary to the public interest.

4. At the level of admission to the super-speciality courses, no special provisions are permissible, they being contrary to the national interest. Merit alone can be the basis of selection."

31. In 'T.M.A.Pai Foundation Case', in para 54, the Hon'ble Supreme Court has pointed out that while regulating the right of private management to establish an educational institution, such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure including qualified staff and the prevention of mal-administration by those in charge of management. In the same breadth, it has been pointed out that fixing of rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admission would be unacceptable restrictions.

32. Again in para 58 of the above said Judgment, the Hon'ble Supreme Court highlighted the importance of merit in the matter of admission to any professional institution and that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious. Further it was held that excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission and that appropriate regulations for this purpose are to be made keeping in view the other observations made in the judgment in the context of admissions to unaided institutions.

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33. In para 65 of the above said Judgment, the Hon'ble Supreme Court again highlighted the importance to be attached to the reputation of an educational institution by virtue of the quality of its faculty and its students and the other facilities it offers and also the recognition to be accorded to such private educational institutions who have personality of their own in order to maintain their atmosphere and tradition and the necessity for them to have the right to choose and select the students who can be admitted to their courses of study. At the same time, the Hon'ble Supreme Court also cautioned that such extraordinary recognition shown to such reputed institutions should not impose unreasonable restriction and that in setting up their own process of selection, rejection of admission should not be whimsical or for extraneous reasons. Ultimately in para 68, the Hon'ble Supreme Court directed as to how some uniform method or merit based selection are to be made in the private unaided professional institutions while at the same time providing certain amount of seats to take care of poor and backward sections of the society.

34. In the 'Islamic Academy of Education case' at the very out set, the Hon'ble Supreme Court stated as to the necessity to clarify certain doubts and anomalies which cropped up after the 11 Judges Bench Judgement of the Hon'ble Supreme Court in 'T.M.A.Pai Foundation case'. The Hon'ble Supreme Court has stated in the very opening paragraph, as under:

> "After the judgement was delivered on 31-10-2002, the Union of India, various State Governments and the educational institutions understood the majority judgement in different perspectives. Different statutes/regulations were enacted/framed by different State Governments. These led to litigations in several courts. Interim orders passed therein have been assailed before this Court. When these matters came up before a Bench of this Court, the parties to the writ petitions and special leave petitions attempted to interpret the majority decision in their own way as suited to them and therefore at their request all these matters were placed before a Bench of five Judges. It is under these circumstances that this Bench has constituted so that doubts/anomalies, if any, could be clarified."

35. Again in para 2 of the above said Judgment, while referring to the submissions made on behalf of the petitioners that any observation made in the body of the judgment had to be read in the context of the answers given, it was stated that the ratio decidendi of a judgment has to be found out only on reading the

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entire judgment and that the ratio of the Judgment is what is set out in the judgment itself. It was further stated that in case of doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into and that by reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment.

36. In para 6 of the above said Judgment, the question that arose for consideration were framed and question Nos. 3 and 4 are relevant for our present purpose, which are as under:

> "6.(1). ....
> "6.(2). ....
> "6.(3). Whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100%, and if not, to what extent; and
> "6.(4). Whether private unaided professional colleges are untitled to admit students by evolving their own method of admission."

37. In para 16 of the above said Judgment, while interpreting paragraph 68 in 'T.M.A.Pai Foundation case', the Hon'ble Supreme Court has held as under:

> "16. ..... Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by the State/University". The words "common entrance test" clearly indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of their quota, either on the basis of the common entrance test, conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. Medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice-board of all colleges which have chosen to admit as per this

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test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on the basis of merit as per that merit list."

38. In para 17 of the above said Judgment, the Hon'ble Supreme Court dealt with a contention raised on behalf of certain institutions who had their own admission procedure and had stated as under:

> "17. At this juncture it is brought to our notice that several institutions, have since long, had their own admission procedure and that even though they have been raised against them and no complaints have been made regarding fairness or transparency of the admission procedure adopted by them. These institutions submit that they have special features and that they stand on a different footing from other minority non-aided professional institutions. It is submitted that their cases are not based only on the right flowing from Article 30 (1) but in addition they have some special features which require that they be permitted to admit in the manner they have been doing for all these years. A reference is made to few such institutions i.e. Christian Medical College, Vellore, St.John's Hospital, Islamic Academy of Education etc. The claim of these institutions was disputed. However, we do not think it necessary to go into those questions. We leave it open to the institutions which have been established and who have had their own admission procedure for, at least, the last 25 years to apply to the Committee set out hereinafter."

39. In para 19 of the above said Judgment, while directing the respective State Governments to constitute a permanent Committee to ensure that the tests conducted by the Association of Colleges is fair and transparent, has also provided scope for the Committee to permit a institution to adopt its own procedure. It was however, stated there in that no institute which has not been established and does not follow its own admission procedure for the last, at least, 25 years, should be permitted to apply or granted exemption from admitting students in the manner set out earlier."

40. In para 21, the Hon'ble Supreme Court directed that the seats to be filled up by the State should be in the ratio of 50:50.

41. In the subsequent judgment reported in "2004(8) SCC 139 (P.A.INAMDAR AND OTHERS versus STATE OF MAHARASHTRA AND

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OTHERS)" (hereinafter referred to as "P.A.Inamdar case") in para 13 and 14, while dealing with the claim of 'Islamic Academy of Education case' that there should not be a restriction on its right to hold its own form of admission which had been in existence in 25 years or more, the Hon'ble Supreme Court ordered as under in para 13.

> "13. .... We need not go into these submissions at this stage, as it would require us to go into the question whether the restriction of 25 years or more would apply in all cases irrespective of the merits of the institutions or its back ground or whether such a restriction was contrary to the decision in 'T.M.A. Pai. By way of an interim measure, we permit the Islamic Academy Education colleges to hold separate entrance examinations in terms of the order dated 18-8-1993...."
>
> "14. It is made clear that this order is limited to Islamic Academy Education Colleges alone."

42. In the judgment of the Hon'ble Supreme Court reported in "1986 (3) SCC 727 (DR.DINESH KUMAR AND OTHERS (II) versus MOTILAL NEHRU MEDICAL COLLEGE, ALLAHABAD AND OTHERS)", the Hon'ble Supreme Court has observed as under in paragraph 12(4), as under:

> "12(4). We are of the view that when selection of candidates is being made for admission on an all India basis, no factor other than merit should be allowed to tilt the balance in favour of a candidate. We must remember that what we are regulating are admissions to post-graduate courses and if we want to produce doctors who are MD or MS, particularly surgeons who are going to operate upon human beings, it is of the utmost importance that the selection should be based on merit. ....."
>
> "....We are therefore, of the view that no weightage should be given to a candidate for rural service rendered by him so far as admissions to post graduate courses are concerned...."

43. In the subsequent judgment reported in "(1992) 2 SCC 26 (DR.SNEHELATA PATNAIK AND OTHERS versus STTE OF ORISSA AND OTHERS)", the Hon'ble Supreme Court, while referring to the observations found in '1986(3) SCC 727' (cited supra), has stated as under in para 2:

> "2. In our opinion, this observation

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certainly does not constitute the ratio of the decision. The decision is in no way dependent upon these observations. Moreover, those observations are in connection with All India Selection and do not have equal force when applied to selection from a single State. These observations, however, suggest that the weightage to be given must be the bare minimum required to meet the situation. In these circumstances, we are of the view that the authorities might well consider giving weightage up to a maximum of 5 per cent of marks in favour of in-service candidates who have done rural service for five years or more. The actual percentage would certainly have to be left to the authorities. We also clarify that these suggestions do not in any way confer any legal right on in-service students who have done rural service nor do the suggestions have any application to the selection of the students up to the end of this year."

44. In yet another judgment reported in "AIR 2001 SC 717 (K.DURAISAMY AND ANOTHER ETC.,ETC., versus STATE OF TAMIL NADU AND OTHERS)", a question arose as to 'the scheme for admission to Super Speciality courses envisaging admission from two sources, namely, in-service candidates and non-service candidates by fixing 50% of seats exclusively to each of them' came up for consideration, wherein, it was held that the quota for in-service candidates cannot be worked out after excluding those in-service candidates who got admitted on the basis of merit. Though the Hon'ble Supreme Court was dealing with a case relating to admission of candidates to Super Speciality and P.G.Courses, the earlier Constitution Bench Judgment of the Hon'ble Supreme Court, reported in 'Dr.Preeti Srivastava case' was not cited before the Hon'ble Supreme Court.

45. In the light of the above stated legal position in the various judgments, the submissions of the learned senior counsel for the respective parties are to be considered. As far as the submission that G.O.Ms.No.130 dated 17-6-2003 is not applicable to Super Speciality course, I am afraid that such a contention cannot be accepted for more than one reason. In the first place, as pointed out by Mr.K.Subramanian, learned senior counsel appearing for the fifth respondent, Post Graduate Medical Education Regulations-2000 points out that even super specialities would fall within the category of P.G.Courses. Both while dealing with the general conditions as well as the period of training to be prescribed, it is specifically mentioned that both D.M. And M.Ch. are covered by the above said Regulations. That apart, in the Constitution Bench Judgment reported in 'Dr.Preeti Srivastava case' which dealt with the Super Speciality courses, the Hon'ble Supreme Court has also

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referred to Super Speciality course as a specialised P.G.education. Abbreviation to the nomenclature, viz., M.D.- M.S. P.G. Courses and D.M.-M.Ch. Super Speciality courses, as could be seen from the Postgraduate Medical Education Regulations 2000 are as under:

"M.D. - Doctor of Medicine
M.S. - Master of Surgery
D.M. - Doctor of Medicine
M.Ch. - Master Chirurgiae"

46. The Super Speciality courses over and above a Master Degree is being undertaken as a 'study' with reference to a specialised subject. A reference to Annexure-I to the 'Prospectus 2004-2005 of the 3 years Higher Speciality courses' disclose that while a minimum Masters Degree in any particular field can either be on General Medicine or General Surgery or Paediatric and so on, the Super Speciality is with reference to an exclusive subject such as Neurology or Cardiology or Neuro Surgery or Cardio Thoraicic Surgery, and so on. Therefore, in effect, the Super Speciality course can only be construed as part and parcel of yet another Higher Post Graduation over and above a Masters Degree. Further even the petitioner has understood the course only as a P.G.Degree or Diploma as could be seen from its own representations, namely, the one dated 23-4-1997/7-5-1997 as well as 17-9-2003. In the former, the petitioner itself has claimed at page 2 as under:

> "We may point out that we offer only a few post graduate seats viz., 3 for D.M., 3 for M.Ch. And one for M.D.(RT). From a practical point of view, allotment of 50 percent by Government to outside candidates will not significantly increase the availability of seats for them while it will seriously reduce the limited opportunities available for merit candidates."

47. Again in its representation dated 17-9-2003, the petitioner has stated at page 3 as under:

> "There are only 3 seats for DM and 3 seats for the M.Ch. And 1 seat in the MD Radiation Oncology sanctioned to the Institute. We represent that it will be very unfair to take 50% away from this scanty number of sets by the Government when it has its own M.Ch.course in the Government Royapettah Hospital and DM in the Government General Hospital, which are both 100% Government controlled. ..."

48. Therefore, merely because in the fixation of cut of date for

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various courses in the communication dated 14-1-2004 the third respondent dealt with Super Speciality courses and Higher Speciality Courses as a separate category, I am unable to conclude that that alone would mean that such Super Speciality courses would not come within the category of P.G.Courses. In any case, even in G.O.Ms.No.130 dated 17-6-2003, the Higher Speciality Courses have been dealt with as a separate category, though it calls for allocation of 50% of seats for State Government allotment. I, therefore, reject the said submission so made on behalf of the petitioner.

49. As far as the submission made based on the Judgment in 'Dr.Preeti Srivastava case', I find considerable force in the said submission made on behalf of the petitioner. In fact, the various extracted portions of the said judgments in this order definitely supports the claim of the petitioner. It cannot be said that those observations contained in paras 22 and 23 of the said Judgment are to be read only in the context of application of communal reservation alone. The observations such as,

> "...it is essential in the national interest that these special facilities are made available to persons of high calibre possessing the highest degree of merit so that the nation can shape their exceptional talent that is capable of contributing to the progress of human knowledge, creation and utilisation of new medical, technical or other techniques, extending the frontiers of knowledge through research work—in fact everything that gives to a nation excellence and ability to compete internationally in professional, technical and research fields..."

and further observations found in para 23 to the effect that-

> "...a super-specialist acquires expert knowledge in his speciality and is expected to possess exceptional competence and skill in his chosen field, where he may even make an original contribution in the form of new innovative techniques or new knowledge to fight diseases. It is in public interest that we promote these skills. Such high degrees of skill and expert knowledge in highly specialised areas, however, cannot be acquired by anyone or everyone. ..."

and further,

> "...Opportunities for such training are few and it is in the national interest that these are made available to those who can profit from them the most viz., the best brains in the country, irrespective of the class to which they belong....".

Further, in para 34, it has been stated,

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> "...Not everyone has this ability. Of course intelligence and abilities do not know any frontiers of caste or class or race or sex. They can be found anywhere, but not in everyone. Therefore, selection of the right calibre of students is essential in public interest at the level of specialised post-graduate education...".

50. The above observations found in the said Judgment does disclose that as between the national interest and providing any quota for admission to such Super Speciality courses, the national interest should prevail and there should be no restrictions or limitations in the selection process for such specialised Post Graduate courses.

51. In the above said background when the case on hand is analysed, I am able to appreciate the stand of the petitioner that in the light of the extraordinary reputation gained by the petitioner institution at the National level in the field of cancer treatment, it is entitled to claim some special status in the matter of selection. The petitioner has acquired the status of Regional Centre for Cancer patients. The institution deals only with cancer patients and the number of cancer patients healed by the petitioner is not comparable with any other Medical Institutions whether private or public. It is nobody's case that so far in the matter of admission to such courses, the petitioner had resorted to any unfair means or non-grant of admission are for any whimsical or for any extraneous reasons. That apart, as per the Prospectus issued by the State Government, the selection for various Super Speciality courses would involve sufficient expenditure such as payment of fees, by way of tuition fee and special fee to the tune of Rs.50,000/- per annum apart from the requirement of the selected service candidates to execute a bond for a sum of Rs.10,00,000/- with two sureties in Tamil Nadu Medical Service in the same rank or Medical Officers of Higher rank, undertaking to the effect that they would serve the Government till the date of their superannuation. In respect of non-service candidates, they have to execute a bond for a sum of Rs.10,00,000/- to the Government, that they would serve the Government at least for a minimum period of two years. Whereas, in the petitioner institution, the selected candidates would not only be provided free academic training, but they would also be paid stipend of Rs.9000/- per month during the course of study period. The selection is also stated to be on an All India basis while the selection made by the third respondent is confined to the State of Tamil Nadu alone. The process of selection does not provide for any preference to any category.

52. Therefore, when the selection process of the petitioner institution is viewed from the stand point of its reputation,

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faculties, the range of selection on All India basis, free education provided by it apart from payment of stipend, would go to show that the petitioner institution stands on a different pedestal than that of any other institution, leave alone the Government institutions. Viewed in that respect, certainly the product of the petitioner institution in such Super Speciality courses would provide a further more care and intensive service to the needy cancer patients and such a special status of the petitioner institution cannot be equated with any other ordinary unaided private professional institution. I am therefore of the view that there would be every justification in the petitioner's claim in contending that its selection process at least in so far as it related to the Super Speciality courses, leave alone the other P.G.Courses, namely, D.M. (RT) and M.D.(RT) should not be touched or allowed to be interfered with by attempting to induct any other candidate whose merit was tested for the purpose of admission to such Super Speciality courses in the State Government institutions.

53. In this context, at the risk of repetition, it can be stated that the very fact that one of the candidates, namely, Dr.P.Arul Raj, who is selected for one of the seats in the State owned medical institutions aspiring to get himself admitted in the petitioner institution itself is proof positive about the extraordinary reputation and stature maintained by the petitioner institution. In my view such a reputation maintained by the petitioner institution should never be attempted to be diluted.

54. Further, even applying the ratio of the different Judgments of the Hon'ble Supreme Court, viz., "T.M.A.Pai Foundation Case", "Islamic Academy of Education Case" as well as "P.A.Inamdar Case", I do not find any conflict. It is common ground that all along, the State Government was permitting the petitioner Instituion to have its own process of admission to both Graduate as well as Super-speciality Courses. In fact, apart from allowing the petitioner to have its own process of selection on an All India Basis, the State Government also exempted the petitioner from the application of G.O.Ms.No.469 dated 18-9-1996 providing for 50% of seats to be filled up by the State Government by deleting the name of the petitioner institution from the list of Colleges mentioned in G.O.Ms.No.119 dated 26-3-1997. At the risk of repetition, it will have to be stated that till date, the State Government was consciously permitting the petitioner to have its own method of selection on an All India Basis in respect of the filling up of all the seats, both Post Graduate as well as Super Speciality Courses. Apparently, the approach of the State Government on this aspect cannot also be faulted, inasmuch as the same is in consonance with what has been stated by the Hon'ble Supreme Court in para 65 of "T.M.A.Pai Foundation Case", wherein the Hon'ble Supreme Court highlighted the importance of an

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Educational Institution, by virtue of its reputation gained due to the quality of its faculty, the quantity of students, the facilities offered who have personality of their own in order to maintain their standard and tradition. Further, in para 17 of "Islamic Academy of Education Case" the Hon'ble Supreme Court, while referring to various Institutions who have since long their own admission procedure by virtue of certain special features, has stated to the effect that-

> "17. .... However, we do not think it necessary to go into those questions. We leave it open to the Institutions, which have been established and who have had their own admission procedure for, at least, the last 25 years to apply to the Committee set out hereinafter."

Again in the "P.A.Inamdar Case", while permitting the Islamic Academy of Education to adopt its own process of selection, has observed in para 13 to the effect that-

> "13. .... we need not go into these submissions at this stage, as it would require us to go into the question whether the restriction of 25 years or more would apply in all cases irrespective of the merits of the institutions or its back ground. ...."

Thus, by applying the dictum of the Hon'ble Supreme Court as stated in "Islamic Academy of Education Case" that the "Ratio Decidendi" of a Judgment has to be found out only on reading the entire Judgment and that the ratio of the Judgment is, what is set out in the Judgment itself, it will have to be held that the State Government has rightly permitted the petitioner to have its own process of selection of candidates for filling up the seats in Post Graduate as well as Higher Speciality Courses. The State Government thus having understood the legal position laid down in the above referred to Judgments and permitted the petitioner to adopt its own method of selection, it cannot now be permitted to take a sudden 'U' turn at the time of filling up of the seats and try to interfere with the admissions made by the petitioner.

55. On a close reading of "Dr.Preeti Srivastava Case", I find that the Hon'ble Supreme Court made it clear that they did not examine the question as to permissibility of reservation at the Postgraduate level of medical education. The Hon'ble Supreme Court, however, held that the prescription of lower minimum qualifying marks for the reserved category candidates at the post-graduate level of medical education must be decided by the Medical Council of India. The Hon'ble Suprme Court, however, made it tacitly clear that at the level of super-speciality course, no special provisions are permissible, they are being contrary to

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national interest where merit alone can be the basis of the selection. In the said Judgment, it is true that super-speciality course has been characterised as a higher post-graduate course as has been described in para 22 of the said Judgment. Therefore, even while holding that the super-speciality course can only be characterised as a 'higher post-graduate course' yet, in the light of greater stress laid by the Hon'ble Supreme Court as to the importance of the said course in the sense that any dilution of merit at the level of super-specialization would adversely affect the national goal having the best possible pupil at the highest level of professional and educational training, I am of the view that the consideration of the question relating to admission to such a super-speciality course can be safely weighed based on the ratio of the decision rendered in "Dr.Preeti Srivastava Case". In this context, it would be worthwhile to refer to what has been stated by the Hon'ble Supreme Court in "2002(1) SCC 428 (cited supra), wherein, in para 59, the importance of All India merit has been highlighted in the following words:

> "59. .... In the case of institutions of national significance such as AIIMS, additional considerations against promoting reservations or preference of any kind destructive of merit become relevant. ..."

56. In the case on hand, in the petitioner institution in so far as it sought to fill up 50% of the seats at the higher super-speciality course has not been faulted by the first respondent-State. It is not the case of the respondent-State that the selection process of the petitioner institution was contrary to any statute or the prescriptions made in the decision of the Hon'ble Supreme Court in "T.M.A.Pai Foundation Case", "Islamic Academy of Education Case" or even for that matter "P.A.Inamdar Case". The attempt of the respondent State is only to ensure its share of 50% of seats in the super-speciality courses. Therefore, it cannot be said that the petitioner committed any serious error in the process of selection made by it for the super-speciality course. If the stand of the respondent-State was that the whole selection process of the petitioner was not inconsonance with the decisions rendered in "T.M.A.Pai Foundation Case", "Islamic Academy of Education Case", etc., there is no question of the respondent-State restricting its claim only to 50% of the seats in those courses. The very fact that the respondent-State is not seeking to interfere with the selection made by the petitioner in so far as 50% of the seats itself establishes that the selection process adopted by the petitioner institution on its own for making the selection to the super-speciality courses was acceptable. Therefore, I am unable to see how the respondent-State can be permitted to contend that the selection made by the petitioner in respect of the other 50% seats alone of the super-speciality courses was not inconsonance with the ratio of the

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decisions rendered in "T.M.A.Pai Foundation Case" and "Islamic Academy of Education Case". As far as I could see, the fallacy in the submission of the State as well as that of the 5th respondent is that while, there can be fault in the method of selection made by the petitioner, yet for the purpose of allotment of seats alone, the criteria fixed in the above referred to judgments should be followed. When once the State Government thought it fit to permit the petitioner to continue to follow its own method of selection, thereafter, there would be no scope for it to turn around and insist that there should be sharing of seats alone. Even in para 16 of the "Islamic Academy of Education Case", the Hon'ble Supreme Court has made it clear that the Common Entrance Test for making the selection should be either by the 'Consortium' or 'State' and not both. Therefore, in a special case like this where, the petitioner Institution is only one of its kind in this Region which was following its own pattern of admission from the very inception which method of selection was also consciously permitted by the State up to the present selection, there is no scope to hold that there can be sharing of seats based on the Institutional Selection as well as that of the State. Such an approach if permitted to take place that would be in conflict with what has been stated by the Hon'ble Supreme Court in "Islamic Academy of Education Case". I am of the view that applying the ratio of the decision of the Hon'ble Supreme Court in "Dr.Preeti Srivastava Case", when merit is the sole criteria of admission as made by the petitioner institution for filling up of the seats, there would be very little scope for the respondent-State to seek for filling up of the other 50% of the seats as of right. In this context, the contention of Mr.Sri Ram Panchu, learned senior counsel in highlighting the process of selection made by the petitioner as against the selection procedure prescribed by the respondent-State in its Prospectus would certainly weigh in favour of the petitioner institution's method of selection which would in turn certainly entitle the petitioner to insist that such a merit based selection made in the national interest should always be preferred.

57. Further as pointed out by the learned senior counsel for the petitioner, the respondent-State never intended to make the selection for the super-speciality courses available in the petitioner institution at the time when it issued its Prospectus. In para 12 of the Prospectus, while in Annexure-I, "Code Number/Discipline/ Duration/Eligibility" are provided, in Annexure-II, the distribution of seats in different institutions of the State are mentioned which are to be referred by the candidates applied for the courses based on the Prospectus. Significantly, in the said Annexure-II, the name of the petitioner institution, the number of seats available therein have not been mentioned. Therefore, when the candidates who applied for the super-speciality courses as per the above said Prospectus issued

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by the State Government, I am unable to accept the contention of the respondents that such selection made based on the prescriptions stipulated in the Prospectus would also include the super-speciality courses of the petitioner institution. The present stand of the respondent-state that based on the paper publication dated 27-7-2004 such a stand of the respondent-State should be accepted, is, in my opinion, purely an after-thought. The stand of the petitioner cannot also be said to be in contravention of the decisions of the Hon'ble Supreme Court in "T.M.A.Pai Foundation Case", "Islamic Academy of Education Case" and "P.A.Inamdar Case" inasmuch as it is not the case of any of the respondents that the petitioner compromised on merits while making the selection. In none of the counter affidavits filed on behalf of the respondents 1 to 5, any specific allegation has been made as against the petitioner to the effect that merit was given a go bye and that the selection of the sixth respondent was based on any special consideration or preference. In the above referred to judgments also, what has been repeatedly emphasized is that 'merit' alone should be the criteria. It is not the case of the respondent-State that the selection process of the petitioner for filling up of the super-speciality courses or even for that matter the Post-graduate courses was unethical or by showing any preferences. Therefore, on that ground, there is no scope for interfering with the selection of the sixth respondent inasmuch as, as held by me earlier, the Hon'ble Supreme Court itself has laid greater emphasis that merit alone should be the criteria for any selection to the super-speciality course. In such circumstances, I do not find any infirmity in the selection made by the petitioner to any of the super-speciality courses much less in the selection of the sixth respondent.

58. In view of my reasoning as above, it will have to be held that the quota of 50% seats to be filled in by the respondent-State as claimed by the state based on G.O.Ms.No.130 dated 17-6-2003 cannot be extended to the super-speciality courses to the petitioner Premier Institution and consequently, the rejection of the petitioner's claim for filling up of the seats in the super-speciality courses by the State Government in its order in Ref.No.1215/SCS II (1)/2003, dated 3-2-2004 cannot also be justified.

In the result,

a) Both the Writ Petitions stand allowed;

b) The Order of the third respondent in Ref.No.1215/SCS II (1)/2003, dated 3-2-2004 is hereby set aside;

c) It is hereby declared that the provisions of G.O.Ms.No.130 dated 17-6-2003 will have no application insofar as petitioner Institution is concerned regarding admission to Super-speciality Courses offered by it;

d) There shall be no order as to costs; and

e) All the connected W.P.M.Ps. are closed.

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Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government, Government of Tamil Nadu,
   Health and Family Welfare Department,
   Secretariat, Chennai-600 009.

2. The Registrar, The Tamil Nadu Dr.MGR Medical University,
   No.69, Anna Salai, Guindy, Chennai-600 032.

3. Director of Medical Education,
   162, Periyar E.V.R.Salai, Kilpauk, Chennai-600 010.

4. Union of India,
   rep. by Ministry of Health and Family Welfare, Nirman Bhavan,
   New Delhi-110 611.

one cc to the Govt. Pleader SR.1787.

One cc to Mr.G.Thilakavathi, Advocate SR.1654.

Two ccs to Mr.Azhagu shivanandan, Advocate SR.1606.

WPNOS.16572&16573 OF 2004

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